

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



STATE OF CONNECTICUT

V.

JAMES PERO

Consent Order# WSWDS11007

Date Issued: April 26, 2011

A. With the agreement of James Pero, ("Respondent"), the Commissioner of Environmental Protection ("Commissioner") finds:

1. Respondent is an individual who resides at 113 Dorset Lane in Madison, CT and is the owner of property located at 20 Helm Street, West Haven, Connecticut, shown on Map No. 61, Block 10, Lot 1 in the City of West Haven Assessor's Office and is more fully described in a deed that is recorded on Page 907 of Volume 1446 in the City of West Haven land records ("the site").
2. Based on an inspection conducted at the site by the Department of Environmental Protection's Emergency Response and Spill Prevention Division on August 10, 2010, and subsequent file review, Respondent failed to:
 - a) Obtain a permit to build, establish, or alter a solid waste facility in which more than ten (10) cubic yards of solid waste, generated elsewhere was stored for transfer after July 1, 1971 as required by Sections 22a-209-4 and 22a-209-9 of the Regulations of Connecticut State Agencies ("RCSA") and Sections 22a-208a(b) and 22a-208c of the Connecticut General Statutes ("CGS"). Specifically, the Department found at the site that Respondent was storing greater than ten (10) cubic yards of bagged asbestos waste in a Waste Management trailer placquered "2212".
3. As a result of the Department's August 10, 2010 inspection findings, the Department of Environmental Protection ("DEP") issued Notice of Violation No. WSWDS10086 to Respondent on August 17, 2010 for establishing and operating a solid waste facility without a permit.
4. The Department received a signed compliance statement dated September 23, 2010 with attached letters received by the Department on September 27, 2010 in response to Notice of Violation No. WSWDS10086. To date, Respondent has not demonstrated to the Department that the Waste Management trailer placquered "2212" containing bagged asbestos waste has been removed from the site and transported to a permitted solid waste facility or facilities.

5. Respondent stated in their response letter dated September 23, 2010 that on August 24, 2010 United Oil Recovery had collected a composite sample from various used oils being stored in a drain bucket, four (4) five gallon buckets, (1) fifty-five gallon drum and (1) 250 gallon grey tank. Based on the analytical lab report dated August 25, 2010, the composite sample was determined to be non-hazardous.
6. By virtue of the above, Respondent has violated Connecticut General Statutes (CGS) Sections 22a-208a(b) and 22a-208c and the Regulations of Connecticut State Agencies (RCSA) Sections 22a-209-4, 22a-209-9, and 22a-449(c)-119.

B. With the agreement of Respondent, the Commissioner, acting under Sections 22a-6, 22a-208, and 22a-225 of the Connecticut General Statutes, orders Respondent as follows:

1. Respondent shall not conduct solid waste activities requiring a permit at the site without first obtaining such a permit from the Commissioner.
2. On or before thirty (30) days after issuance of this consent order, Respondent shall retain one or more qualified consultants acceptable to the Commissioner to prepare the documents and implement or oversee the actions required by this consent order and shall, by that date, notify the Commissioner in writing of the identity of such consultant(s). Respondent shall retain one or more qualified consultants acceptable to the Commissioner until this consent order is fully complied with, and, within ten (10) days after retaining any consultant other than one originally identified under this paragraph, Respondent shall notify the Commissioner in writing of the identity of such other consultant. Respondent shall submit to the Commissioner a description of a consultant's education, experience and training which is relevant to the work required by this consent order within ten (10) days after a request for such a description. Nothing in this paragraph shall preclude the Commissioner from finding a previously acceptable consultant unacceptable. Note: The approved hired consultant required under this paragraph will only be responsible for certifying and reporting to the Commissioner when Respondent has satisfied paragraph B.3 of this consent order. Respondent will prepare, certify, and submit the information required by paragraphs B.4. and B.5. of this consent order.
3. Within sixty (60) days from the date of issuance of this consent order, Respondent shall remove all asbestos waste and used oil from the site and dispose of such wastes at a permitted facility or facilities that accepts such wastes and shall provide proof on proper disposal of asbestos waste and used oil within ninety (90) days from the date of issuance of this consent order.
4. Progress reports. On or before the last day of September, December, March, and June following the issuance of this consent order, and continuing until actions required by this consent order have been completed as approved and to the satisfaction of the Commissioner, Respondent shall submit a progress report to the Commissioner describing the actions which Respondent has taken to comply with this consent order to date.

5. Future Compliance Plan including Recycling.

- a. Within sixty (60) days after the issuance of this consent order, Respondent shall submit to the Commissioner, for review and written approval, a plan which details the actions and/or operational changes to ensure future compliance with the Solid Waste Management Regulations, RCSA Section 22a-209-1 through 17, the Standards for the Management of Used Oil, RCSA Section 22a-449(c)-119, including those set forth in paragraphs A.2 of this consent order.
- b. Respondent shall conduct a comprehensive recycling review of its operations at 20 Helm Street, West Haven, Connecticut to evaluate compliance with Connecticut's recycling laws set forth in CGS Section 22a-241b(c). On or before ninety (90) days after the date of issuance of this consent order, Respondent shall submit for the Commissioner's review and written approval a business recycling profile documenting the management of recyclable materials. An example profile is included as Attachment A to this consent order.

6. Full compliance. Respondent shall not be considered in full compliance with this consent order until all actions required by this consent order have been completed as approved and to the Commissioner's satisfaction.

7. Status of Notice of Violation No. WSWDS10086. This consent order supersedes Notice of Violation No. WSWDS10086 issued on August 17, 2010.

8. Civil penalty. Respondent shall pay a civil penalty of **(\$7,000⁰⁰)** dollars as the total civil penalty to be sought by the Commissioner for those, and only those, violations specified in paragraph A.2. of this consent order. The penalty shall be paid in twelve separate payments as follows:

First payment shall be in the amount of **five hundred eighty seven dollars (\$587⁰⁰)** and shall be paid on or before **ninety (90) days** after issuance of this consent order.

Second payment shall be in the amount of **five hundred eighty three dollars (\$583⁰⁰)** and shall be paid on or before **one hundred eighty (180) days** after issuance of this consent order.

Third payment shall be in the amount of **five hundred eighty three dollars (\$583⁰⁰)** and shall be paid on or before **two hundred seventy (270) days** after issuance of this consent order.

Fourth payment shall be in the amount of **five hundred eighty three dollars (\$583⁰⁰)** and shall be paid on or before **three hundred sixty (360) days** after issuance of this consent order.

Fifth payment shall be in the amount of **five hundred eighty three dollars (\$583⁰⁰)** and shall be paid on or before **four hundred fifty (450) days** after issuance of this consent order.

Sixth payment shall be in the amount of **five hundred eighty three dollars (\$583⁰⁰)** and shall be paid on or before **five hundred forty (540) days** after issuance of this consent order.

Seventh payment shall be in the amount of **five hundred eighty three dollars (\$583⁰⁰)** and shall be paid on or before **six hundred thirty (630)** days after issuance of this consent order.

Eight payment shall be in the amount of **five hundred eighty three dollars (\$583⁰⁰)** and shall be paid on or before **seven hundred twenty (720)** days after issuance of this consent order.

Ninth payment shall be in the amount of **five hundred eighty three dollars (\$583⁰⁰)** and shall be paid on or before **eight hundred ten (810)** days after issuance of this consent order.

Tenth payment shall be in the amount of **five hundred eighty three dollars (\$583⁰⁰)** and shall be paid on or before **nine hundred (900)** days after issuance of this consent order.

Eleventh payment shall be in the amount of **five hundred eighty three dollars (\$583⁰⁰)** and shall be paid on or before **nine hundred ninety (990)** days after issuance of this consent order.

Twelfth payment shall be in the amount of **five hundred eighty three dollars (\$583⁰⁰)** and shall be paid on or before **one thousand eighty (1080)** days after issuance of this consent order.

9. **Payment of civil penalty.** Payment of penalties under this consent order shall be mailed or personally delivered to the Department of Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, CT 06106-5127, and shall be by certified or bank check payable to "Treasurer, State of Connecticut." The check shall state on its face, "Waste Engineering and Enforcement Division civil penalty, [the consent order number]". A copy of the check and any transmittal letter shall also be sent to Julie Dutton in the Bureau of Materials Management and Compliance Assurance at the same address.
10. **Sampling and sample analyses.** All sampling and sample analyses which, are required by this consent order and all reporting of such sample analyses shall be conducted by a laboratory certified by the Connecticut Department of Public Health Services to conduct such sampling and analyses. All sampling and sample analyses performed under this consent order shall be performed in accordance with procedures specified or approved in writing by the Commissioner, or, if no such procedures have been specified or approved, in accordance with EPA document SW-846. Unless otherwise specified by the Commissioner in writing, the value of each parameter shall be reported to the maximum level of precision and accuracy specified in the applicable protocol, and if no such level is specified, to the maximum level of precision and accuracy possible.
11. **Approvals.** Respondent shall use best efforts to submit to the Commissioner all documents required by this consent order in a complete and approvable form. If the Commissioner notifies Respondent that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and Respondent shall correct the deficiencies and resubmit it within the time specified by the Commissioner or, if no time is specified by the Commissioner, within 30 days of the Commissioner's notice of deficiencies. In approving any document or other action under this consent order, the Commissioner may approve the document or other action as submitted or performed or with such conditions or

modifications as the Commissioner deems necessary to carry out the purposes of this consent order. Nothing in this paragraph shall excuse noncompliance or delay.

12. Definitions. As used in this consent order, "Commissioner" means the Commissioner or a representative of the Commissioner.
13. Dates. The date of "issuance" of this consent order is the date the consent order is deposited in the U.S. mail or personally delivered, whichever is earlier. The date of submission to the Commissioner of any document required by this consent order shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this consent order, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is deposited in the U.S. mail or is personally delivered, whichever is earlier. Except as otherwise specified in this consent order, the word "day" as used in this consent order means calendar day. Any document or action which is required by this consent order to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed by the next day which is not a Saturday, Sunday or Connecticut or federal holiday.
14. Certification of documents. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this consent order shall be signed by Respondent or, if Respondent is not an individual, by Respondent's chief executive officer or a duly authorized representative of such officer, as those terms are defined in Section 22a-430-3(b)(2) of the Regulations of Connecticut State Agencies, and by the individual(s) responsible for actually preparing such document, and each such individual shall certify in writing as follows:

"I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, that the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that any false statement made in the submitted information may be punishable as a criminal offense under Section 53a-157b of the Connecticut General Statutes and any other applicable law."

15. Noncompliance. This consent order is a final order of the Commissioner with respect to the matters addressed herein, and is nonappealable and immediately enforceable. Failure to comply with this consent order may subject Respondent to an injunction and penalties.
16. False statements. Any false statement in any information submitted pursuant to this consent order may be punishable as a criminal offense under Section 53a-157b of the Connecticut General Statutes and any other applicable law.
17. Notice of transfer; liability of Respondent. Until Respondent have fully complied with this consent order, Respondent shall notify the Commissioner in writing no later than 15 days after transferring all or any portion of the facility, the operations, the site or the business

which is the subject of this consent order or after obtaining a new mailing or location address. Respondent's obligations under this Consent Order shall not be affected by the passage of title to any property to any other person or municipality.

18. Commissioner's powers. Except as provided hereinabove with respect to payment of civil penalties, nothing in this consent order shall affect the Commissioner's authority to institute any proceeding or take any other action to prevent or abate violations of law, prevent or abate pollution, recover costs and natural resource damages, and to impose penalties for past, present, or future violations of law. If at any time the Commissioner determines that the actions taken by Respondent pursuant to this consent order have not successfully corrected all violations, fully characterized the extent or degree of any pollution, or successfully abated or prevented pollution, the Commissioner may institute any proceeding to require Respondent to undertake further investigation or further action to prevent or abate violations or pollution.
19. Respondent's obligations under law. Nothing in this consent order shall relieve Respondents of other obligations under applicable federal, state and local law.
20. No assurance by Commissioner. No provision of this consent order and no action or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the actions taken by Respondent pursuant to this consent order will result in compliance or prevent or abate pollution.
21. Access to site. Any representative of the Department of Environmental Protection may enter the site without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this consent order.
22. No effect on rights of other persons. This consent order neither creates nor affects any rights of persons or municipalities that are not parties to this consent order.
23. Notice to Commissioner of changes. Within 15 days of the date Respondent becomes aware of a change in any information submitted to the Commissioner under this consent order, or that any such information was inaccurate or misleading or that any relevant information was omitted, Respondent shall submit the correct or omitted information to the Commissioner.
24. Notification of noncompliance. In the event that Respondent becomes aware that it did not or may not comply, or did not or may not comply on time, with any requirement of this consent order or of any document required hereunder, Respondent shall immediately notify by telephone the individual identified in the next paragraph and shall take all reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. Within five (5) days of the initial notice, Respondent shall submit in writing the date, time, and duration of the noncompliance and the reasons for the noncompliance or delay and propose, for the review and written approval of the Commissioner, dates by which compliance will be achieved, and Respondent shall comply with any dates which may be approved in writing by the Commissioner. Notification by Respondent shall not excuse noncompliance or delay, and the Commissioner's approval of

any compliance dates proposed shall not excuse noncompliance or delay unless specifically so stated by the Commissioner in writing.

25. Submission of documents. Any document required to be submitted to the Commissioner under this consent order shall, unless otherwise specified in this consent order or in writing by the Commissioner, be directed to:

Eugene MacGillis, Environmental Analyst
Department of Environmental Protection
Bureau of Materials Management and Compliance Assurance
Waste Engineering and Enforcement Division
79 Elm Street
Hartford, Connecticut 06106-5127

Respondent consents to the issuance of this consent order without further notice. The undersigned certifies that he/she is fully authorized to enter into this consent order and to legally bind the Respondent to the terms and conditions of the consent order.

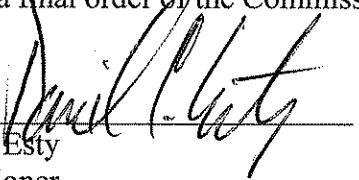
James Pero

By: 

(Individual with authority to bind Respondent to terms of consent order)

Date: 4-8-11

Issued as a final order of the Commissioner of Environmental Protection.


Daniel C. Esty
Commissioner

4/25/11
Date

Consent Order No. WSWDS11007

Attachment A-Business Recycling Profile Form

City of West Haven Land Records

ATTACHMENT A
Business Recycling Profile Form